

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 03 2018 ★

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CIT BANK, N.A.,

LONG ISLAND OFFICE

Plaintiff,

– against –

ORDER
CV 15-7256 (JFB) (SIL)

DANIELLE AYERS, a/k/a DANIELLE M.
AYERS, and M.D.R.,

Defendants.

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JOSEPH F. BIANCO, District Judge:

On March 27, 2017, this Court entered default judgment against defendants Danielle Ayers, a/k/a Danielle M. Ayers, and M.D.R. (together, “defendants”) and referred the matter to Magistrate Judge Steven I. Locke for a Report and Recommendation to address the issue of damages and other relief sought by plaintiff. (ECF No. 57.) On July 18, 2017, Judge Locke issued a Report and Recommendation (the “initial R&R”), recommending that plaintiff be awarded \$545,290.91 in damages, as well as an additional \$2,531.51 in statutory fees and costs. (ECF No. 63.) The initial R&R also recommended that plaintiff’s motion for attorney’s fees be denied, but that plaintiff be granted leave to resubmit an affidavit providing the details necessary for a calculation of such fees. (*Id.* at 12.)

On August 18, 2017, plaintiff renewed its application for attorney’s fees. (ECF No. 66.) On August 24, 2017, the Court adopted the initial R&R in its entirety (ECF No. 68), and on August 31, 2017, the Court referred the matter to Judge Locke for a Report and Recommendation to address the issue of attorney’s fees (ECF No. 70). On December 5, 2017, Judge Locke issued another Report and Recommendation (the “R&R”), recommending that plaintiff’s motion for attorney’s fees be granted in part and denied in part. (ECF No. 72.) Specifically, Judge Locke recommended that plaintiff be

awarded \$17,090.00 in attorney's fees, and that plaintiff's application for an award of \$1,300.00 in anticipated fees be denied without prejudice and with leave to renew upon the submission of the appropriate supporting documentation after such fees are actually incurred. (*Id.* at 13.) A copy of the R&R was served on defendants on December 5, 2017. (See ECF No. 73.) Judge Locke directed that any objections to the R&R be filed within fourteen (14) days of receipt of the R&R. (ECF No. 72 at 13.) The deadline has since passed, and no party has filed an objection.

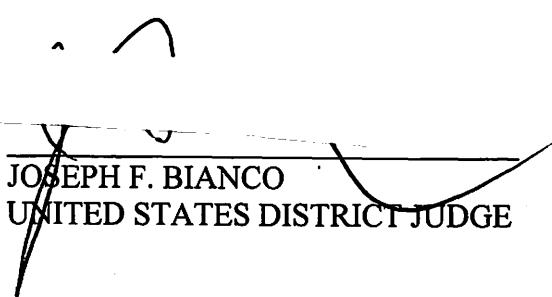
Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.''" (quoting *Thomas*, 474 U.S. at 155)).

Although no party has objected to the R&R, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that plaintiff is awarded \$17,090.00 in attorney's fees. IT IS FURTHER ORDERED that plaintiff's application for an award of \$1,300.00 in anticipated

fees is denied without prejudice and with leave to renew upon the submission of the appropriate supporting documentation after such fees are actually incurred. IT IS FURTHER ORDERED that plaintiff shall serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.


JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: January 3, 2018
Central Islip, New York